BRITISH COLUMBIA Ministry of Attorney General

CHILD PROTECTION MEDIATION
Questions & Answers

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1. What does the Child, Family and Community Service Act say about mediation?

The Child, Family and Community Service Act (CFCSA or the Act) and Regulation (B.C. Reg. 527/95) allows social workers and families to choose mediation as a way to resolve disputes related to children's plans of care or other issues affecting children. Participating in child protection mediation is voluntary.

- Section 22 provides legislative authority to use mediation to resolve disputes.
- Section 23 allows judges to adjourn cases for up to 3 months so that mediation can proceed.
- Section 24 requires mediation to be a confidential process (with some exceptions).
- Section 9 of the Regulation requires a roster of mediators to be established and social workers and families to choose a mediator from the roster.
- Section 10 of the Regulation allows the ministry to pay some or part of any day-to-day expenses families might have to attend mediation, such as day-care costs, food, and transportation.

2. What is mediation?

Mediation is a process for working out disagreements with the help of a trained, impartial person (a mediator). Mediators do not judge who's right or wrong. Instead, they encourage people to focus on common interests and work towards a mutually acceptable solution.

Mediation allows disputes to be settled outside of the court process. Mediators assist people to make agreements that meet everybody's interests, including the social worker's obligation to meet his or her legislated responsibilities. For information about the mediation process, including choosing mediation to resolve child protection cases, visit the Dispute Resolution Office web site at: www.ag.gov.bc.ca/dro/

Mediation can be used any time that a social worker and another person are unable to resolve an issue relating to the child or a plan of care. The child does not have to be removed before mediation can be an option for resolving a dispute. In fact, mediation can help to resolve disputes that would otherwise result in a child being removed and a court action commencing.

In child protection matters, the style of mediation used is called interest-based mediation. Interest-based mediation is a process that considers (or "frames") disputes not in terms of legal rights, but rather in terms of people's underlying concerns, goals and needs — these are called interests. Rather than thinking about what their interests are, people in disputes usually think about their positions — things

they say they want, or feel they are entitled to. Positions and interests are not always the same.

3. *What are the advantages of choosing mediation to resolve disputes?*

Mediation is a way to resolve disputes that is not adversarial. There are many advantages to choosing mediation, such as the speed with which a mediation session can be set up compared to waiting for a court date; however experience in child protection mediation in B.C. notes two particular outcomes:

- the relationship between the social worker and the family is very often improved, and
- parents like to participate in mediation and feel empowered by the mediation process.

Studies of child protection mediation programs in other countries suggest these conclusions; now similar studies in B.C. support them as well. These studies are available from the Dispute Resolution Office. Research also suggests that people who reach agreement through mediation are more likely to follow through with their part of the agreement because they have played a role in crafting the agreement.

4. *Who acts as a mediator?*

The Ministry of Attorney General and the Ministry of Children and Family Development (MCFD) collaboratively established a roster of mediators in 1997. There are currently 35 mediators on the roster.

Because it is critical that the mediators be seen as neutral and unbiased, the Dispute Resolution Office contracts for these services from the private sector and is responsible for mediator oversight and management.

To become a member of the roster, individuals must meet stated training and experience standards, successfully pass a written exam testing knowledge of the CFCSA, participate in an interview to assess suitability to conduct child protection mediation, and attend an Orientation Session to learn more about child protection matters.

The mediator roster can be found at:
www.ag.gov.bc.ca/dro/child-protection/index.htm

Click on "Roster of Child Protection Mediators" in the left-hand column.

5. *What kind of issues can be referred to mediation?*

All kinds of child protection issues can be settled at mediation. There are no kinds of issues that seem less likely to settle at mediation than others, regardless of the characteristics of the case — characteristics such as drug and alcohol abuse or sexual or physical abuse.

Some of the issues that can be negotiated at mediation include:

- the services the family will receive and participate in as part of a plan of care
- ensuring the child's safety in the parent's home by making changes in the home environment
- ensuring the child's safety by making arrangements for the child to reside with family or friends
- the length of time the child will be in the Director's care
- a plan to ensure the child's cultural, racial, linguistic, and religious heritage while the child is in the Director's care
- the amount and form of access the parent or others will have with the child
- the parent's contribution towards the maintenance of a child in the Director's care
- the specific terms of a supervision order or other order
- the terms necessary to apply for an order by consent—including the extension of an existing order
- a "last chance" order prior to a Continuing Custody Order being sought and/or enforced
- whether or not parents can have any input into selecting an adoptive family
- obtaining a "stacking order," that is, negotiating an interim order (s.35) and a temporary custody order (s.41) at the same mediation hearing (providing all service and other requirements of the CFCSA are met).

The kinds of issues that will be mediated depend on many factors, such as where the child is residing at the time it was determined the child was in need of protection.

6. *What issues can never be referred to mediation?*

Whether or not a child is in need of protection can never be mediated. The social worker is responsible for making that assessment and, if required, the court will make a final determination on that matter. The social worker also has an absolute statutory obligation to ensure that any agreement made (in mediation or otherwise) is consistent with the safety and well-being of the child.

Facts cannot be mediated, including facts about the existence or non-existence of abuse or neglect. What can be mediated is the course of action parents and the Director follow as a consequence of those facts. Ministry policy on mediation states that the child, the child's parent and any other participants are not required to:

- agree with the reasons for the Director's belief that the child needs protection
- make admissions about the circumstances of the child or the child's family, or
- accept blame or acknowledge faults for any acts, omissions or other conduct.

7. *What are the steps in the mediation process?*

One of mediation's strengths is that different mediators have different styles. Nonetheless, there are steps in the process that are the same regardless of who conducts the mediation.

1. Intake
   All mediators have an intake process or a manner in which they assess the case to ensure it is suitable for mediation. Some mediators like to hold face-to-face pre-mediation meetings, separately, with each of the parties. Other mediators might conduct an intake process over the telephone. Some of the things likely to be discussed at these pre-mediation meetings are:
   - **what will happen at mediation**
   - **what the issues and interests are**
   - **whether or not other people should attend the mediation and what their roles might be**
   - **the fact that mediation is a confidential process and what that means**
   - **the fact the people have the right to seek independent legal advice, including before signing an agreement reached in mediation.**

2. Agreement to Mediate
   Before the mediation can begin, all the parties must sign an Agreement to Mediate. A copy of the agreement used in child protection mediation is available from the Dispute Resolution Office. The agreement might be signed at a pre-mediation meeting or at the beginning of the mediation session itself.

3. Mediator's opening statement
   When the first mediation session begins, the mediator describes the process, establishes ground rules for conduct, reviews the agreement to mediate and confirms commitment to proceed. The mediation might take place over one, two or more sessions.

4. Story development
   Each party gives a synopsis of the facts of the dispute. The mediator then clarifies and describes (or "frames") the issues in words acceptable to the parties.

5. Identifying the interests
   Using questions, the mediator shifts the focus from positions to underlying interests. All the parties' interests are identified and the mediator summarizes the goal of the negotiations.

6. Generating options
   The parties list and evaluate options for satisfying as many interests as possible, and, through this process, reach a settlement.

7. Formalizing the Agreement
   The mediator will write up any agreement reached in mediation using a standard form provided by the Dispute Resolution Office: Agreement Reached in Mediation. The terms of the agreement can be the basis for a Section 60 Consent Order, a Voluntary Care Agreement, or a Support Services Agreement.

8. *Who participates in mediation?*

A social worker will always attend mediation. A Team Leader/Supervisor may attend if the case is especially complex or difficult. It is important that the person who has authority to agree to a negotiated settlement either be at the mediation or available to the parties during the mediation, perhaps by telephone, in order that an agreement can be reached.

The parents or guardians of the child will always attend mediation. Ideally, everyone who is required to be present for a court order to be made should be present, but mediation can proceed if some of the people entitled to be present cannot be located. If an agreement reached in mediation were to be formalized as a court order, the court process for making an order when some parties are absent would be followed, just as it would if the case had proceeded directly to court.

A child older than 12 years of age may attend mediation. However, experience in B.C. in child protection mediation suggests older children seldom attend mediation. Their interests can be represented at the table by the social worker and mediators will usually meet with older children before the session to become familiar with their interests as well.

Counsel for the parents may attend, but it is not a requirement that parties be represented by counsel to participate in mediation.

Counsel for the Director's does not, as a rule, attend mediation. Some exceptions might be when a case is especially complex or difficult.

Parents might want advocates or even other family members to attend mediation with them.

The Act lists other persons who are entitled to be notified prior to a Presentation Hearing when a child is removed pursuant to s. 30 of the Act (s. 34) and this includes aboriginal organizations/First Nations when the child is aboriginal. A First Nations representative may attend mediation.

9. *Who selects the mediators and gets the mediation process started?*

Neither the CFCSA nor the Regulation set out a formal process for selecting a mediator. The parties can decide among themselves how they will do that. Anyone can review the list of mediators and suggest a mediator to another person. Sometimes legal counsel may suggest a mediator. Anyone can call the mediator and ask questions about his or her background and training if that will help them to choose.

Once selected, the mediator can provide advice and information to all parties about the process and can also schedule and arrange for a location for the session. While mediators sometimes use their own mediation facilities, sessions can also be scheduled at a suitable location suggested by the social worker or the family. Families quite often consent to meet for mediation at space that is available at an MCFD office.

If there is no mediator located in the community where the family and the social worker reside, a mediator can be chosen from a neighbouring community.

Sometimes a judge will refer parties to mediation from a Case Conference. The process for selecting a mediator is the same as it is when families and social workers decide to try mediation without it being suggested by a judge.

10. *What is a facilitated planning meeting?*

In some parts of the province, child protection mediation is done in the form of a facilitated planning meeting (FPM). This style of mediation was designed and tested in the South Surrey Region in 2001. The important differences between mediation delivered in a FPM style and other mediation services are:

- Orientation Sessions
  The mediator will conduct face-to-face pre-mediation sessions separately with the social worker and the parents before scheduling the planning meeting. The goal is to prepare parties to begin negotiating their defined issues/interests right away at the actual planning meeting.

  For parents, the Orientation Session is an opportunity to tell their stories and find out more about the mediation process. For social workers, it is an opportunity to consider the case and possible options for resolving the dispute. The mediator uses Orientation Sessions to ensure the case is appropriate for mediation, helps people frame their interests and clarifies what can and cannot be negotiated at the planning meeting

- Court Work Supervisor
  The FPM is supported by the Court Work Supervisor (CWS), a senior ministry employee with considerable court experience. The CWS has a responsibility for referring appropriate cases to the mediation/planning meetings; attending Orientation Sessions with social workers; and attending planning meetings with authority to agree to a settlement.

- Single Meetings
  While mediation may take place over one, two or more individual sessions, a FPM most often takes place in one day, and it can last 2 – 5 hours. At the end of the meeting, the mediator generally produces an agreement that everyone signs.

  Meetings take place in a single session because much of the initial mediation work is done ahead of time in the Orientation Sessions including the story telling, defining the issues/interests and summarizing common goals for the planning meeting. When families and social workers gather for the planning meeting, they can begin negotiating the issues right away.

The mediators who are on the roster also facilitate planning meetings. For more information about Facilitated Planning Meetings visit the Child Protection Mediation web site at: www.ag.gov.bc.ca/dro/child-protection/index.htm.

11. Where can social workers find out more about mediation?

More information about mediation in B.C., including mediation programs in civil non-family matters, is available on the Dispute Resolution Office web site at: www.ag.gov.bc.ca/dro/. There are links to other Web sites of interest. The B.C. Mediator Roster Society also has a Web site with information about mediation in B.C. and other jurisdictions at www.mediator-roster.bc.ca